

ASSEMBLY BILL

No. 2190

Introduced by Assembly Member Block

February 18, 2010

An act to amend Section 7100 of the Health and Safety Code, relating to disposition of remains.

LEGISLATIVE COUNSEL'S DIGEST

AB 2190, as introduced, Block. Disposition of remains: authorized agent.

Existing law lists the person or persons who, in an order of succession, have the right to control the, and duty of disposition of, the remains of a deceased person if other directions have not been given by the decedent. The first among the list of persons so authorized pursuant to this list is an agent under a power of attorney for health care who has the right and duty of disposition. A person upon whom the duty of interment is imposed by law who omits to perform that duty within a reasonable period of time is guilty of a misdemeanor.

This bill would specify that the completion of a United States Department of Defense Record of Emergency Data, DD Form 93, as that form exists on December 31, 2010, or its successor form if approved by the State Registrar, shall be sufficient to establish an agent who has the right and duty of disposition.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7100 of the Health and Safety Code is amended to read:

7100. (a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the remains devolves upon, the following in the order named:

(1) An agent under a power of attorney for health care who has the right and duty of disposition under Division 4.7 (commencing with Section 4600) of the Probate Code, except that the agent is liable for the costs of disposition only in either of the following cases:

(A) Where the agent makes a specific agreement to pay the costs of disposition.

(B) Where, in the absence of a specific agreement, the agent makes decisions concerning disposition that incur costs, in which case the agent is liable only for the reasonable costs incurred as a result of the agent's decisions, to the extent that the decedent's estate or other appropriate fund is insufficient.

(2) The competent surviving spouse.

(3) The sole surviving competent adult child of the decedent; or, if there is more than one competent adult child of the decedent, the majority of the surviving competent adult children. However, less than the majority of the surviving competent adult children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult children of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult children.

(4) The surviving competent parent or parents of the decedent. If one of the surviving competent parents is absent, the remaining competent parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent.

(5) The sole surviving competent adult sibling of the decedent; or, if there is more than one surviving competent adult sibling of

1 the decedent, the majority of the surviving competent adult siblings.
2 However, less than the majority of the surviving competent adult
3 siblings shall be vested with the rights and duties of this section
4 if they have used reasonable efforts to notify all other surviving
5 competent adult siblings of their instructions and are not aware of
6 any opposition to those instructions by the majority of all surviving
7 competent adult siblings.

8 (6) The surviving competent adult person or persons
9 respectively in the next degrees of kinship; or, if there is more than
10 one surviving competent adult person of the same degree of
11 kinship, the majority of those persons. Less than the majority of
12 surviving competent adult persons of the same degree of kinship
13 shall be vested with the rights and duties of this section if those
14 persons have used reasonable efforts to notify all other surviving
15 competent adult persons of the same degree of kinship of their
16 instructions and are not aware of any opposition to those
17 instructions by the majority of all surviving competent adult
18 persons of the same degree of kinship.

19 (7) The public administrator when the deceased has sufficient
20 assets.

21 (b) (1) If ~~any~~ a person to whom the right of control has vested
22 pursuant to subdivision (a) has been charged with first or second
23 degree murder or voluntary manslaughter in connection with the
24 decedent's death and those charges are known to the funeral
25 director or cemetery authority, the right of control is relinquished
26 and passed on to the next of kin in accordance with subdivision
27 (a).

28 (2) If the charges against the person are dropped, or if the person
29 is acquitted of the charges, the right of control is returned to the
30 person.

31 (3) Notwithstanding this subdivision, no person who has been
32 charged with first or second degree murder or voluntary
33 manslaughter in connection with the decedent's death to whom
34 the right of control has not been returned pursuant to paragraph
35 (2) shall have any right to control disposition pursuant to
36 subdivision (a) which shall be applied, to the extent the funeral
37 director or cemetery authority know about the charges, as if that
38 person did not exist.

39 (c) A funeral director or cemetery authority shall have complete
40 authority to control the disposition of the remains; and to proceed

1 under this chapter to recover usual and customary charges for the
2 disposition; when both of the following apply:

3 (1) Either of the following applies:

4 (A) The funeral director or cemetery authority has knowledge
5 that none of the persons described in paragraphs (1) to (6),
6 inclusive, of subdivision (a) exists.

7 (B) None of the persons described in paragraphs (1) to (6),
8 inclusive, of subdivision (a) can be found after reasonable inquiry,
9 or contacted by reasonable means.

10 (2) The public administrator fails to assume responsibility for
11 disposition of the remains within seven days after having been
12 given written notice of the facts. Written notice may be delivered
13 by hand, U.S. mail, facsimile transmission, or telegraph.

14 (d) The liability for the reasonable cost of final disposition
15 devolves jointly and severally upon all kin of the decedent in the
16 same degree of kinship and upon the estate of the decedent.
17 However, if a person accepts the gift of an entire body under
18 subdivision (a) of Section 7155.5, that person, subject to the terms
19 of the gift, shall be liable for the reasonable cost of final disposition
20 of the decedent.

21 (e) This section shall be administered and construed to the end
22 that the expressed instructions of the decedent or the person entitled
23 to control the disposition shall be faithfully and promptly
24 performed.

25 (f) A funeral director or cemetery authority shall not be liable
26 to any person or persons for carrying out the instructions of the
27 decedent or the person entitled to control the disposition.

28 (g) For purposes of this section, “adult” means an individual
29 who has attained 18 years of age, “child” means a natural or
30 adopted child of the decedent, and “competent” means an
31 individual who has not been declared incompetent by a court of
32 law or who has been declared competent by a court of law
33 following a declaration of incompetence.

34 (h) *For the purpose of paragraph (1) of subdivision (a), the*
35 *completion of a United States Department of Defense Record of*
36 *Emergency Data, DD Form 93, as that form exists on December*
37 *31, 2010, or its successor form if approved by the State Registrar,*

- 1 *shall be sufficient to establish an agent who has the right and duty*
- 2 *of disposition.*

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